

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

CRI'SHAWNA CARTER, individually
and on behalf of all others similarly
situated,

Plaintiff,

- against -

KEURIG DR PEPPER INC.,

Defendant.

Class Action Complaint

Jury Trial Demanded

Cri'shawna Carter ("Plaintiff"), through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. According to studies, an increasing number of consumers are paying closer attention to what they eat.
2. This is due to increased public scrutiny about what goes into foods, and awareness of how that impacts personal health.
3. Unsurprisingly, the result has been greater demand for foods and ingredients that are natural.
4. A Nielsen survey even found that a significant majority of consumers are willing to pay more for foods with only natural ingredients.
5. The demand for natural foods is based, in large part, on the belief that

“whole ingredients,” which have not been highly processed or altered from their original state, are healthier than foods laden with “additives.”¹

6. This term encompasses non-food substances, created in laboratories, to fulfill various functions, such as facilitating processing (“processing aids”), improving appearance (“coal tar dyes,” rebranded as “colorants”), increasing bulk (“fillers” and “thickeners”), creating or enhancing taste (“flavorings”), facilitating the suspension of one liquid in another (“emulsifiers”), and extending shelf-life, concealing inferiority, and slowing deterioration (“preservatives”).

7. Manufacturers have taken notice of these changing consumer preferences, to exploit “extrinsic cues such as visual information on labels and packaging,” seeking to influence purchase decisions.

8. To prevent companies from exploiting “extrinsic cues such as visual information,”² the Federal Food, Drug and Cosmetic Act (“FFDCA”), the model for

¹ Andrea Rock, “Peeling Back the ‘Natural’ Food Label,” Consumer Reports, 27 January 2016.

² Lancelot Miltgen et al., “Communicating Sensory Attributes and Innovation through Food Product Labeling,” *Journal of Food Products Marketing*, 22.2 (2016): 219-239; Helena Blackmore et al., “A Taste of Things to Come: The Effect of Extrinsic and Intrinsic Cues on Perceived Properties of Beer Mediated by Expectations,” *Food Quality and Preference*, 94 (2021): 104326; Okamoto and Ippaita, “Extrinsic Information Influences Taste and Flavor Perception: A Review from Psychological and Neuroimaging Perspectives,” *Seminars in Cell & Developmental Biology*, 24.3, Academic Press, 2013; Clement, J., *Visual Influence on In-Store Buying Decisions: An Eye-Track Experiment on the Visual Influence of*

this State’s identical Agriculture and Markets Law (“AGM”), prohibits “misbranding” and adulteration of foods promoted as “natural,” when based on ingredients and production methods far from nature. 21 U.S.C. § 301 *et seq.*³ AGM § 3.⁴

9. To this end, the Food and Drug Administration (“FDA”), and this State’s Department of Agriculture and Markets (“Ag&Mkts”), defined “natural” through a “negative” definition, to mean that nothing artificial or synthetic has been included in, or has been added to, a food that would not normally be expected to be in that food.⁵

10. This includes color additives, regardless of whether they are obtained from natural sources, i.e., beet juice added to apple filling in a food promoted as “mixed berry.”

Packaging Design, *Journal of Marketing Management*, 23, 917-928 (2007); Gupta K, O. et al., *Package Downsizing: Is it Ethical?* 21 *AI & Society* 239-250 (2007).

³ “Misbranded” is the statutory term for labeling that is false and/or misleading, while “adulterated” means to “render (something) poorer in quality by adding another substance, typically an inferior one.”

⁴ Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Title 1, Department of Agriculture and Markets, Chapter VI, Food Control, Subchapter C, Food and Food Products (Article 17, AGM), including 1 N.Y.C.R.R. § 250.1 (adopting federal standards of identify for foods), 1 N.Y.C.R.R. § 259.1(a) (adopting Parts 100, 101 and 102 of Title 21).

⁵ A “negative” definition is often used with difficult to define concepts, such as “darkness,” understood as the absence of light, and “vacuum,” recognized as the absence of air.

11. When the FDA invited the public to weigh in, thousands of ordinary citizens agreed, with many sharing Kristine Milochik’s sentiment, how “When [she] see[s] the word ‘Natural’ on packaging, [she] expect the contents to have only ingredients as they are found in nature. No chemicals, no coloring, no flavoring, no GMO’s.”⁶

12. To appeal to the growing number of consumers seeking foods and beverages that are natural and/or contain only natural ingredients, Dr. Pepper 7-Up Inc. (“Defendant”) manufactures, distributes, sells, labels, markets, and/or packages, (1) sparkling seltzer water, (2) with a “Mandarin Orange” taste, (3) qualified in small print, “Flavored With Other Natural Flavors,” (4) in orange colored cans with pictures of oranges, (5) described as “All Natural,” in all capital letters, at eye level at the top of the can, larger than any other text except the brand name, (6) Canada Dry (“Product”).

⁶ FDA, [Use of the Term Natural on Food Labeling](#), Oct. 2, 2018.



13. Unfortunately for Milochik and many others, the Product is “misbranded” and misleads consumers, because despite the labeling and packaging, causing purchasers to expect it was “All Natural,” understood as consisting of ingredients that were not manmade, heavily processed, and/or using additives not be considered by consumers to be “natural,” it contains “natural flavor,” which, despite its name, has little in common with nature, revealed from the fine print of the ingredient list, on the back of the can. AGM § 201(1); 21 U.S.C. § 343(a)(1).



14. Though “natural flavor” is defined as “the essential oil, oleoresin, essence or extractive...which contains the flavoring constituents derived from a [] fruit [or juice],” many have noted how “There is little substantive difference in the chemical compositions of natural and artificial flavors,” since both are “blends [of]

appropriate chemicals together in the right proportions.”⁷ 21 C.F.R. § 101.22(a)(3) *compare with* 21 C.F.R. § 101.22(a)(1).

15. This is especially true in the case of “compounded flavors,” which, upon information and belief, and/or the investigation of Counsel, are used to provide the Product’s “mandarin orange” taste, and such allegations are likely to have evidentiary support following a reasonable opportunity for discovery.

16. That the Product uses a “compounded flavor” can be inferred from the front label statement, in small print, “Flavored With Other Natural Flavors.”

17. This is flavor industry jargon and means its taste comes from something called “Orange WONF,” or “Orange Flavor With Other Natural Flavor.”

18. While an “Orange WONF” may contain a small amount of material from an orange, it is created by specialized chemists, known as “flavorists,” who engage in modern day alchemy.

19. While the starting material may be an orange, or other fruits, creating a WONF entails isolating, purifying, distilling, concentrating, and synthesizing proteins and other components from the cells and tissue of fruits, such as oranges.

20. To create this “mysterious additive,” flavorists then use “‘natural’

⁷ [Natasha Longo, Food Labs Use an Average of 2000 Chemicals to Create 500 ‘Natural Flavors’ You Would Never Suspect are Artificial](#), Waking Times, Aug. 27, 2013.

bioidentical chemicals,” molecularly identical to their synthetic counterparts used in “artificial flavors,” differing in only their source material, to imitate the taste of oranges.⁸

21. These “flavor systems” can include up to a hundred non-flavor ingredients, comprising roughly eighty percent of its volume, broadly referred to as “adjuvants,” or “non-flavor ingredients.”

22. These include stabilizers, dispersants, emulsifiers, preservatives, like butylated hydroxyanisole (“BHA”), tocopherols, and citric acid, among numerous others, to deliver, maintain, and/or enhance a flavor’s performance.

23. Since a compounded flavor is highly concentrated, and highly volatile, it cannot be added directly.

24. Instead, it is added through solvents, such as ethyl alcohol, glycerin, or the most used, propylene glycol, a synthetic substance.

25. These non-flavor ingredients need not be declared anywhere on a food’s label, because they are considered “incidental additive[s] in a food, originating in a [] flavor used in the manufacture of the food.” 21 C.F.R. § 101.22(h)(2).

26. By the end of this process, “There is little substantive difference in the

⁸ Natasha Longo, [Food Labs Use an Average of 2000 Chemicals to Create 500 ‘Natural Flavors’ You Would Never Suspect are Artificial](#), Waking Times, Aug. 27, 2013.

chemical compositions of natural and artificial flavors,”⁹ since both are “blends [of] appropriate chemicals together in the right proportions.”¹⁰

27. Unsurprisingly, one Harvard Professor went further, by “unequivocally stat[ed], ‘One thing you can be sure of when you see ‘natural flavor’ on a package is that it is not ‘natural.’”¹¹

28. Similar to how color additives, even when from natural sources, are not considered by consumers and regulating agencies, to be “natural,” when added to enhance the color attributes of other foods, flavorings, notwithstanding any non-flavoring ingredients, when obtained from foods other than the flavor source, i.e., oranges, then added to orange flavored foods, are not considered to be “natural” by consumers.

29. As a result of the false and misleading representations, the Product is sold at a premium price, approximately \$1.99 for a twelve ounce can, higher than similar products, represented in a non-misleading way, and higher than similar products, represented in a non-misleading way, and higher than it would be sold for

⁹ Roni Caryn Rabin, [Are ‘Natural Flavors’ Really Natural?](#), New York Times, Feb. 1, 2019.

¹⁰ Natasha Longo, [Food Labs Use an Average of 2000 Chemicals to Create 500 ‘Natural Flavors’ You Would Never Suspect are Artificial](#), Waking Times, Aug. 27, 2013.

¹¹ Carol Kendig, [Xylitol by Any Other Name Would be as Deadly](#), Northwest Naturals, Mar. 21, 2022.

absent the misleading representations and omissions, when these factors are taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, and/or other similar methods, to evaluate a product's attributes and/or features.

JURISDICTION

30. Plaintiff Carter is a resident of New York.

31. The Court has jurisdiction over Defendant because it transacts business within New York and sells the Product to consumers within New York, through its sale and/or distribution from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

32. Defendant transacts business in New York, through the sale of the Product to citizens of New York, from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

33. Defendant has committed tortious acts within this State through the distribution and sale of the Product, which is misleading to consumers in this State.

34. Defendant has committed tortious acts outside this State by labeling,

packaging, representing, and/or selling the Product in a manner which causes injury to consumers within this State, by misleading them as to its contents, production practices, type, origins, quantity, amount, and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of conduct to sell the Product to consumers in this State, and/or derives substantial revenue from the sale of the Product in this State.

35. Defendant has committed tortious acts outside this State by labeling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, ingredients, production practices, type, origins, amount, and/or quality, through causing the Product to be distributed throughout this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

VENUE

36. Venue is in this Court because Plaintiff Carter’s residence is in Bronx County.

PARTIES

37. Plaintiff Carter is a consumer, and resident of Bronx County, New York.

38. Defendant Keurig Dr Pepper Inc. is a Delaware corporation with its principal place of business in Texas.

39. Plaintiff is like most consumers and looks and/or cannot avoid viewing the front label of foods, to see what she is buying, and to learn basic information about them.

40. Plaintiff is like most consumers, who prefers to buy foods which are natural, contain only or mostly natural ingredients, understood as those which were free from additives, and/or the use of industrial chemistry.

41. Plaintiff is like most consumers, who believes that foods labeled as natural are better and/or healthier than those not so identified.

42. Plaintiff read, saw, and/or relied on the packaging and labeling, including “All Natural,” to believe the Product (1) did not contain additive ingredients, (2) got its mandarin orange taste only from orange sources, and/or (3) did not contain ingredients made through industrial chemistry, with adjuvants of the type necessary for the use of compounded flavors.

43. Plaintiff bought the Product with the labeling and packaging identified here, at or around the above-referenced price.

44. Plaintiff purchased the Product between September 2021 and September 2024, at third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, and/or other similar locations.

45. The Product was worth less than what Plaintiff paid, and she would not have paid as much absent Defendant’s false and misleading statements and/or omissions.

CLASS ALLEGATIONS

46. Plaintiff is a consumer, not a re-seller or merchant, and seeks to represent other consumers, in the class identified below, against a big business:

All persons in New York who purchased the Product in New York during the statutes of limitations for each cause of action alleged.

47. Plaintiff’s claims are based upon New York General Business Law (“GBL”) §§ 349 and 350, passed by the legislature to protect unsophisticated consumers, against large and sophisticated commercial entities.

48. Excluded from the Class are (a) Defendant, Defendant’s board members, executive-level officers, members, and attorneys, and immediate family members of any of the foregoing persons, (b) governmental entities, (c) the Court, the Court’s immediate family, and Court staff and (d) any person that timely and properly excludes himself or herself from the Class.

49. Common questions of issues, law, and fact predominate and include whether Defendant’s representations were and are misleading and if Plaintiff and class members are entitled to damages.

50. Plaintiff’s claims and basis for relief are typical to other members

because all were subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

51. Plaintiff is an adequate representative because her interests do not conflict with other members.

52. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

53. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

54. The class is sufficiently numerous, with over one hundred members, because the Product has or had been sold throughout the State for several years, with the representations, omissions, packaging, and/or labeling identified here, from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

55. Plaintiff's Counsel is competent and experienced in complex class action litigation, and intends to protect class members' interests adequately and fairly.

CAUSES OF ACTION

COUNT I

General Business Law ("GBL") §§ 349 and 350

56. To the extent required, this section incorporates by reference other

paragraphs, as necessary.

57. The purpose of the GBL is to protect consumers against unfair and deceptive practices.

58. This includes making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

59. The GBL considers false advertising, unfair acts, and deceptive practices in the conduct of any trade or commerce to be unlawful.

60. Violations of the GBL can be based on (1) other laws and standards related to consumer deception, (2) public policy, established through statutes, laws, or regulations, (3) principles of the Federal Trade Commission Act (“FTC Act”), (4) FTC decisions with respect to those principles, (5) any rules promulgated pursuant to the FTC Act, and/or (6) standards of unfairness and deception set forth and interpreted by the FTC or the federal courts relating to the FTC Act. 15 U.S.C. §§ 41, 45, *et seq.*

61. Defendant’s false and deceptive representations and omissions with respect to the Product’s quantity of contents, level of fill, contents, origins, nutrient values, servings, ingredients, flavoring, type, functionality, and/or quality, are material in that they are likely to influence consumer purchasing decisions.

62. The packaging and labeling of the Product violated the FTC Act, thereby violating the GBL, because the representations, omissions, design, markings, and/or

other elements, including “All Natural,” caused purchasers to expect it (1) did not contain additive ingredients, (2) got its mandarin orange taste only from orange sources, and/or (3) did not contain ingredients made through industrial chemistry, with adjuvants of the type necessary for the use of compounded flavors, was unfair and deceptive to consumers.

63. The packaging and labeling of the Product violates laws, statutes, rules, regulations, and/or norms, which prohibit unfair, deceptive, and/or unconscionable conduct, against the public.

64. The packaging and labeling of the Product violated the GBL, because the representations, omissions, design, markings, and/or other elements, including “All Natural,” caused purchasers to expect it (1) did not contain additive ingredients, (2) got its mandarin orange taste only from orange sources, and/or (3) did not contain ingredients made through industrial chemistry, with adjuvants of the type necessary for the use of compounded flavors, was contrary to statutes and/or regulations, which prohibit consumer deception by companies in the labeling of food products.

State
AGM § 201(1)

Federal
21 U.S.C. § 343(a)(1)

65. Plaintiff believed “All Natural” meant the Product (1) did not contain additive ingredients, (2) got its mandarin orange taste only from orange sources, and/or (3) did not contain ingredients made through industrial chemistry, with

adjuvants of the type necessary for the use of compounded flavors.

66. Plaintiff paid more for the Product, would not have paid as much, and would have paid less, if she knew that it (1) contained additive ingredients, (2) did not get its mandarin orange taste only from orange sources, and/or (3) contained ingredients made through industrial chemistry, with adjuvants of the type necessary for the use of compounded flavors.

67. Plaintiff seeks to recover for economic injury and/or loss she sustained, based on the misleading labeling and packaging of the Product, a deceptive practice under the GBL.

68. Plaintiff may produce evidence showing how she and consumers paid more than they would have paid for the Product, relying on Defendant's representations, omissions, packaging, and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, and/or other advanced methodologies.

69. This means individual damages will be based on the value attributed to the challenged claims and/or omissions, a percentage of the total price paid.

70. As a result of Defendant's misrepresentations and omissions, Plaintiff was injured and suffered damages, by payment of a price premium for the Product, which is the difference between what she paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much it would

have been sold for without the misleading labeling, packaging, representations, statements, omissions, and/or marketing, identified here.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as Counsel for the class;
2. Awarding monetary damages and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: October 26, 2024

Respectfully submitted,

/s/ Spencer Sheehan

Sheehan & Associates P.C.
60 Cuttermill Rd Ste 412
Great Neck NY 11021
Tel (516) 268-7080
Fax (516) 234-7800
spencer@spencersheehan.com

Notice of Lead Counsel Designation:

Lead Counsel for Plaintiff

Spencer Sheehan

Sheehan & Associates P.C.

Counsel for Plaintiff